

Introduction

South Dakota's unemployment insurance program is financed by employers through payroll taxes. It is exactly what the name implies — insurance — and benefits are paid to eligible claimants who meet the conditions fixed by law, as a matter of right, without regard to need.

As an employer, if you are liable under the state law, you will also pay federal unemployment taxes directly to the federal government. This federal tax helps finance various South Dakota Department of Labor workforce and training programs, such as job placement, labor market information and training of workers to meet industry needs. Your federal tax also pays the administrative costs of the state unemployment insurance program and provides funds that may be loaned to states whose unemployment insurance reserves are depleted.

To protect your investment in this program, you should understand your rights and know your responsibilities under South Dakota law. Cooperation with the department will help ensure the unemployment insurance (UI) program is administered efficiently and economically.

This handbook will help you and others in your organization who are responsible for hiring and/or discharging workers, examining and completing unemployment insurance claim notices and preparing payrolls and tax forms. This handbook also provides information on other department programs. We hope it will be useful.

Statements in this handbook are for general information and do not have the effect of law or regulation. The actual unemployment insurance laws and regulations are contained in South Dakota Codified Law, Title 61 (<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=61>) and South Dakota Administrative Rules, Article 47:06 (<http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=47:06>).

If you have a question not covered in this handbook, please contact any UI Field Representative (see p. 34), or write to the:

South Dakota Department of Labor
Unemployment Insurance Division
PO Box 4730, Aberdeen, SD 57402-4730

Or visit our Web site, www.sdjobs.org, and choose 'Unemployment Insurance' on the right-hand menu.

Employer Liability and Coverage

Definition of an Employer/Covered Employer

An **employer** is an individual, partnership, corporation, association, trust, organization or political subdivision, etc., which has in its employ one or more individuals performing services in South Dakota.

You become a **covered employer** when you incur liability and are required to pay taxes into the Unemployment Insurance Fund. You must pay UI taxes if you either:

- paid, in any calendar quarter, for services in **covered employment wages** (see p. 5) of \$1,500 or more.
- employed at least one individual for some portion of a day in each of 20 different calendar weeks, whether or not consecutive, in either the current or preceding calendar year. This need not be the same individual on each day.
- acquired the organization, trade or business, or substantially all of the assets, of another who, at the time of the acquisition, was a covered employer under South Dakota law. You incur liability regardless of the amount of wages paid in the quarter.

Your Responsibility to Keep Us Informed

It is your responsibility to inform the UI Division of the department when you become a covered employer, when you incur liability, or when there has been any change in ownership or legal adjustment in operating a business.

We request that you tell us about:

- purchase or sale of a business or a portion of a business
- wages paid to each individual employed
- total wages paid
- any possible errors, especially errors which may result in payment of incorrect benefits

Duration And Termination Of Liability

Once you become a covered employer, liable under South Dakota law, you must continue to report and pay contributions on any wages paid until your account is terminated by the Division.

You can ask for termination prior to July 1 if:

- no individuals have performed services for you in covered employment in the previous calendar year
- during the prior year, you did not have one employee in 20 calendar weeks and did not pay \$1,500 or more in one calendar quarter

Your coverage is automatically terminated upon notification of sale of your entire business, and your entire **experience-rating** account (see p. 15) may be transferred to your successor. If, however, you have any employment during the remainder of the year, you must report it.

Operating More Than One Establishment

If you operate more than one establishment under the same ownership in South Dakota, two separate account numbers may be assigned. One reason for maintaining separate accounts is for cost accounting. Experience-rating accounts will be consolidated for rating purposes. See p. 15 for more information.

If each of the establishments is operated by a separate employing entity, an account must be established for each business.

For example, two corporations would be separate legal entities, even though individual "A" owns the majority of the stock in each corporation.

If "A" is a partner of "B" in operating one store and a partner of "C" in operating a second store, the two partnerships would each be separate employing entities.

Seasonal Employers

Definitions

A **seasonal industry** or employing unit is one that customarily suspends its operations for revenue for a period of five months or more within a calendar year except for basic caretaking activities.

A **seasonal employer** is one who is operating in a seasonal industry as defined above and who, upon application, is so designated by the department.

Duration of Seasons

The following industries have been designated as seasonal industries in South Dakota.

- Summer hotels, inns, camps, curio shops, roadside restaurants, ice cream/soft drinks stands, and stable/trail ride operations: May 1 to October 1
- Tourist souvenir stores, tour buses, information centers and other operations in the tourist industry: May 1 to October 31
- Seasonally operated retail nurseries: May 1 to October 31
- Drive-in theatres and concessions: April 15 to November 1
- Racetracks and racetrack concessions: May 15 to October 1
- Baseball teams/ ball park concessions: May 1 to September 15
- Carnivals: May 1 to October 1
- Seasonally operated country clubs/golf courses: April 1 to November 1
- Seasonally operated chair lifts: May 1 to November 1
- Seasonally operated ski resorts: November 1 to May 1
- Swimming pools: May 15 to September 15
- Seasonally operated hunting preserves/ game lodges: September 1 to February 1
- Retail nurseries classified in industry number 444220 as enumerated in the North American Industrial Classification Manual (NAICS): May 1 to October 31
- Retail fireworks stands: May 1 to September 15

Applying to Become a Seasonal Employer

Applications for designation as a seasonal employer (Form 26) may be downloaded at <http://dol.sd.gov/ui/forms/form26.pdf>, or obtained by contacting us at:

South Dakota Department of Labor
Unemployment Insurance Tax Division
PO Box 4730
Aberdeen, SD 57402-4730

Benefit Eligibility of Seasonal Employees

If you are a designated seasonal employer, your former employees who were engaged in other than year-round work will be eligible to draw benefits based on wages earned with you **only** for weeks of unemployment when the major portion of such week falls within the defined season of operation of your industry.

Reporting Requirements

Becoming a designated seasonal employer does not in any way affect your obligation to make all reports required by South Dakota laws or regulations.

Covered Employment

Definition

Covered employment is an individual's entire service (including service in interstate commerce), performed for wages or under any contract of hire, written or oral, expressed or implied.

Independent Contractor or Employee?

If an individual performs services for you for remuneration, is that person your employee or an independent contractor?

The worker is an independent contractor and **not** your employee if he or she is **both**:

- Free from your control or direction in the performance of the contract of services
- Engaged in an independently established trade, occupation or business

Otherwise, the worker is your employee. The contractual agreement as well as the actual working relationship must be examined to support a finding that a worker is an independent agent and not an employee.

If you do direct and control the services of an individual, or have the right to direct and control the individual's services, that individual is your employee. The fact that the individual is paid on a commission, share of the profits, fee, job or piecework basis does not necessarily mean that worker is an independent agent. The method of payment is not a controlling factor in this determination.

Services That are Not Covered Employment

- Agricultural labor or service unless the employer pays cash wages of \$20,000 or more in a calendar quarter or the employer employed 10 or more workers in 20 weeks
- Domestic service performed in a private home, local college club or local chapter of a college fraternity or sorority, unless the worker receives cash wages of \$1,000 or more in any calendar quarter
- Services performed by an individual in the employ of a son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of a father or mother. The term "child" has been defined to include stepchildren and foster children

- Services performed by elected officials, members of legislative and judicial bodies, members of the state national or air national guard, temporary employees hired during emergency, and nontenured policy-making or advisory positions. State and local government employees who do not fall under these exclusions are covered employees
- Service performed by a student hired as part of a cooperative education program. Neither are the wages taxable for federal unemployment tax purposes
- Service performed by an individual under 18 years of age in the delivery or distribution of newspapers
- Service performed by an individual as an insurance agent or a solicitor, if all such services are performed for remuneration solely by way of commission
- Service performed:
 - In the employ of a church or convention or association of churches, primarily for religious purposes, or an organization which is operated, supervised, controlled or principally supported by a church, convention or association of churches
 - By a duly ordained, commissioned or licensed minister of a church in the exercise of the ministry or by a member of a religious order in the exercise of duties required by such order
- Service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, or physical or mental deficiency or injury, or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed into the competitive labor market by an individual receiving such rehabilitation or remunerative work
- Service performed as part of an unemployment work-relief program or as part of an unemployment work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training

IRS or Other State Determination of Exempt Employment

Even if the Collector of Internal Revenue or another state determines that certain services constitute exempt employment, you **cannot** assume those services will be exempt under South Dakota law. While the laws are often similar, the federal and state

laws do differ. Also, court decisions and precedent cases are not always the same at the federal level or in different states.

Individuals Hired by Your Employee

Any individual engaged to perform or assist in performing the work of any person in your service is considered your employee. It does not matter whether that individual was engaged or paid directly by you or one of your employees, so long as you have actual or constructive knowledge of the work.

Location Of Services

To be considered covered employment under the South Dakota law, the worker must perform services entirely within the state or perform most of the services in the state with only temporary tasks outside the state.

However, if a worker's service is not localized in any state, all employment is reportable to the state in which the base of operation is located.

If you have any doubt as to where to report wages, contact a tax representative of the UI Division, listed on p. 34.

Reportable Wages

Wages are all payments for personal services from all sources, including commissions, bonuses and cash value of any payment in anything other than cash. Cash value would include items such as goods, board and lodging, working out a debt, etc.

Tip and gratuity income must be reported if it totals \$20 or more per month and is reported to you by the worker. These tips must be included in the gross wages of the employee.

Sick pay and medical leave pay are considered wages and are reportable unless they are payments received under a workers' compensation law.

Some exceptions to reportable wages are:

- Payments made under a plan or system you established to provide for medical and hospital expense or death benefits for an employee
- Dismissal or severance payments which you are not legally required to make

- Payments made to your children, if you are an individual proprietor and the children are under 21 years of age
- Business expenses if expenses are reasonable and ordinary and if the expenses are well documented
- Employer contributions to pension plans authorized in 26 U.S.C. 401(k), 403b, 408(k), 457 and 401(p), the Simple IRA

The above explanation is not all inclusive, so if you have a question regarding wages, contact your local Unemployment Insurance Tax Representative.

Records You Must Keep

You must keep the following records for each employee:

- Full name and Social Security number
- Places of work within the state
- Date hired, rehired or returned to work after temporary or partial layoff
- Date of termination of employment
- Information covering the termination, stating if the termination occurred by voluntary action of the individual, or by discharge, and complete reason for such termination
- The cause of all time lost due to unavailability for work occurring within any week
- Hours worked and wages earned in each pay period, and total wages for all pay periods ending in each quarter of the year, including the cash value of other remuneration, and the amount of all bonuses or special commissions
- Hours worked and wages earned in exempt employment such as agricultural labor, etc.

Covered versus Exempt Employment Records

You must keep records of exempt employment wages and hours separate from those for covered employment for each worker. If you do not keep such records separate, you will be required to report and pay on **all** wages, including the exempt wages.

Employers' Contributions

As a covered employer, you are required to pay taxes on taxable wages at the rate assigned to you.

Tax Rates

If you are a new employer, or an employer who is not eligible for a reduced rate, you will pay tax at the rate of 1.2 percent, plus an investment fee of 0.55 percent, for a total of 1.75 percent the first year. The rate then **decreases** to 1.0 percent plus an investment fee of 0.55 percent for a total of 1.55 percent until you are eligible for a rate based on experience (see p. 15; see also p. 18 for an explanation of the investment fee.) You must maintain a positive unemployment insurance account balance to receive the 1.0 percent rate.

Exception for Construction Industry

All new employers classified in construction industries will pay tax at the rate of 6.0 percent plus an investment fee of 0.55 percent, for a total of 6.55 percent the first year. The rate then **decreases** to 3.0 percent plus an investment fee of 0.55 percent for a total of 3.55 percent until the employer is eligible for a rate based on experience. You must maintain a positive unemployment insurance account balance to receive the 3.0 percent rate. If further information is needed, contact your local UI tax representative (see p. 34).

Table 1. Taxable wage base*

2007	\$8,500
2008	\$9,000
2009	\$9,500
2010	\$10,000

Table 2. New Employer Tax Rate*

	UI Tax		Investment 2007 through 2010
	Non-construction	Construction	
Year 1	1.2%	6.0%	0.55%
Years 2 & 3 (with positive account balance)	1.0%	3.0%	0.55%

*All rates and wage bases subject to change by the South Dakota Legislature

Reports Required

The two most common reports you are required to file are the Employer's Quarterly Contribution, Investment Fee and Wage Report (Form 21) and Notice to Base Period Employer (Form 238). Other reports may be required depending on your particular circumstances.

Employer's Quarterly Contribution, Investment Fee and Wage Report

Covered employers must file these reports quarterly during the months of April, July, October and January. You must file your report during these months even if no wages were paid.

The proper reporting forms are mailed during the last week of each quarter to all employers who:

- filed hard copy reports for the previous quarter
- used a tax-filing service to file their reports
- are filing a report for their first quarter in business

Employers who file electronically will not receive a form in the mail. It is your responsibility to file a report during the month it is due, even if you do not receive a form in the mail.

The Employer's Quarterly Contribution, Investment Fee and Wage Report (Form 21) may be obtained in several ways. You may download it from our Web site as an Excel spreadsheet (recommended; <http://dol.sd.gov/ui/forms/form21.xls>) or as a pdf document (<http://dol.sd.gov/ui/forms/form21.pdf>). You may also contact your nearest UI Tax Unit Field Representative (see p. 34) or you may write to us at:

South Dakota Department of Labor
Unemployment Insurance Office, Tax Unit
PO Box 4730
Aberdeen, SD 57402-4730

Only one set of forms will be mailed. If additional forms are needed, they may be obtained as described above.

Types Of Information Required

There are two sections of each quarterly report: the Employer's Contribution Report and the Employer's Report of Wages.

Information required on the Employer's Quarterly Contribution, Investment Fee and Wage Report (Form 21) includes:

- Number of covered workers
- Total wages paid in covered employment
- Deduction of wages in excess of the annual taxable wage base, (\$7,000 in 2006 and before, \$8,500 in 2007, \$9,000 in 2008, \$9,500 in 2009, and \$10,000 in 2010 and thereafter)
- Taxable wages
- Amount due in contributions
- Other information required for statistical purposes

An example of the Employer's Contribution Report is on p. A-1.

Information required on the Employer's Report of Wages (Form 21a) includes:

- Employee's name and Social Security number
- Total wages paid to the worker during the quarter for covered employment
- Deduction of wages in excess of the taxable wage base, (\$7,000 in 2006 and before, \$8,500 in 2007, \$9,000 in 2008, \$9,500 in 2009, and \$10,000 in 2010 and thereafter)
- Total wages paid to all workers during the quarter for covered employment

An example of the Employer's Report of Wages is on p. A-2.

Note: Wages should be reported in the quarter they were actually paid to the employee, even if they were earned or the work was done in a different quarter.

The Employer's Report of Wages should be attached to the Employer's Quarterly Contribution Report along with the remittance due, and filed with the Division during the month in which the report is due.

Submitting Reports

You may send your reports and remittance by mail or you may file your reports and pay online. See p. 13 for details.

Notice to Base Period Employer

When a former employee files a claim for unemployment insurance, notice of a claim having been filed is sent to each employer whose unemployment insurance account is potentially chargeable. The form is called the Notice To Base Period Employer (Form 238). If the reason for this unemployment is anything other than lack of work, you should give complete details concerning

the reason for separation in the space provided on the form. This form also provides space for separation payment information.

You need to return the form to our office within 15 calendar days of the date appearing on the notice. Prompt return of this separation notice helps protect your right to a reduced contribution rate and limits the charges to your account to only those benefits paid to former employees who are involuntarily unemployed. This also prevents payment of unemployment insurance benefits to individuals not entitled to benefits.

If a controversy arises regarding this separation, we will request additional information, either by mail or telephone. See an example of a Notice To Base Period Employer on p. A-3.

Protesting Charges

All employers within a claimant’s base period will receive notice of potential charges and have the right to protest those charges. If you think benefit payments should not have been charged because of the reason for separation of the claimant, contact us for information on how to file a protest. When writing to us in reference to a claim of a former employee, you should be sure to include the employee’s Social Security number.

When and Where to Pay

State unemployment insurance contributions are to be paid **quarterly** to

South Dakota Department of Labor
Unemployment Insurance Division, Tax Unit
PO Box 4730
Aberdeen, SD 57402-4730

Contributions must be paid quarterly by the end of the month following the calendar quarter covered. However, contributions of less than \$5 a quarter are not due until we issue a “Statement of Payment Due” or until January 31 following the calendar year for which the contributions are payable. All quarterly reports, however, remain due 30 days after the end of the quarter.

Quarter	Due Not Later Than Midnight
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

Online Reporting

You can submit your quarterly report online with the option of making your payment using Electronic Funds Transfer or sending a check. The online method will automatically calculate excess wages and tax due, and also allows you to update important account information. Upon completion of the filing process, you will get a confirmation number with a date and time the report was filed. You may print a copy of the report for your records.

Go directly to <https://sdwagereport.com> or go to our department home page, www.sdjobs.org, and chose 'Online Services' and 'File quarterly unemployment insurance report online'.

For further assistance, please call the UI Tax Unit at 605.626.2312 or your area field representative (see p. 34).

Remittance

Your check, money order or other remittance should be made payable to the South Dakota Unemployment Insurance Division.

Payment Date

Each contribution is considered paid on the date we receive payment. Payments made by mail are considered paid as of the postmark date of the envelope containing the payment.

Late Contributions or Reports

A penalty may be assessed when the quarterly report is not submitted by the due date. The penalty accrues separately on each quarterly report due.

A penalty of \$5 per month (or fraction of a month) is assessed for each delinquent report and an additional penalty of \$5 for each delinquent contribution. The maximum penalty is \$30 for each delinquent report and \$30 for each delinquent contribution, for a total possible penalty of \$60.

Interest of 1.5 percent for each month (or fraction of a month) is also computed from the due date of the report.

NOTE: A report is required even though you may not have had employment during the quarter.

Adjustments and Refunds

If, at the time of filing a quarterly contribution report, you find that a mistake was made on a previous quarterly report, you may make adjustment by showing the tax underpayment or overpayment on the lines provided on the contribution report.

A complete explanation of the error made must be attached to the adjusted report.

If the adjustment involves an employee's wages, the explanation should include the worker's name, Social Security number, wages originally reported, correct wages, and the quarter and year in which the error was made. You should notify us as soon as the error is discovered. The notification may be made by letter, supplying full information concerning the error. If the error resulted in an underpayment, you should forward remittance with the letter. If the error resulted in an overpayment, we will correct the account and refund any amount more than \$25.

You May Contest Your Charges

All employers have the right to contest charges made to their account. If you do not agree with a decision that has been made, you may request a hearing. For more details, see p. 12.

Cost Reimbursement

South Dakota law allows certain employers to elect the "Cost Reimbursement" alternative as a means of financing benefit payment costs.

Nonprofit organizations as defined by Section 501(c)(3) of the Internal Revenue Code, hospitals and institutions of higher education operated by political subdivisions may be eligible to elect to repay benefit costs, instead of making the regular contributions required of other covered employers.

There are two methods of repayment:

- The amount will be a percentage of your total payroll for the immediately preceding calendar year, as the Secretary of Labor shall determine based on the average benefit costs attributable to service in your employ.
- You will be billed quarterly for a proportionate share of unemployment insurance payments that are attributable to service in your employ.

Eligible employers electing the cost-reimbursement method may be required to provide a surety bond. However, in most cases, the "payments in advance" option will satisfy this requirement. A group of cost-reimbursement employers may elect, with the approval of the Secretary of Labor, to act as one entity in electing the cost-reimbursement option.

For additional information regarding cost reimbursement, contact us at

South Dakota Department of Labor
Unemployment Insurance Tax Unit
PO Box 4730
Aberdeen, SD 57402-4730

FUTA Payments

FUTA (Federal Unemployment Tax Act) taxes are paid **quarterly** or **annually** to:

- Internal Revenue Service Center, Odgen, Utah 84201-0046
- IRS, PO Box 105078, Atlanta, GA 30348-5078

See the instructions to federal Form 940 to determine where to pay your FUTA contributions. More information about FUTA can be found at the IRS Web site, www.irs.gov.

Experience-Rating

Experience-rating is the method used to determine your assigned contribution rate based on both your experience as a covered employer (unless you are a cost-reimbursement employer) and the status of the Unemployment Insurance Trust Fund balance.

Rate Determination

Rates are determined strictly according to statute. We are prohibited from arbitrarily determining your reserve ratio or your resulting contribution rate. Rates are computed annually and are assigned for the calendar year. A Notice of Rate Determination will usually be mailed to you about the first of March each year.

Reserve Ratio

We determine this ratio in the following way. The accumulated total benefit payments charged to your account are subtracted from the accumulated total of contributions you paid. This figure is then divided by your total taxable payroll (the sum of taxable payrolls for the three most recently completed calendar years). The resulting percentage figure is your reserve ratio.

Standard Table of Experience Rates

The Reserve Ratio schedule and the Unemployment Insurance and Investment Fee rates are listed in Table 3.

Table 3. SD Unemployment Insurance and Investment Fee Rates*

Reserve Ratio	UI Tax	Investment Fee			
	Rate	2007	2008	2009	2010
Less than -7.00%	8.50%	0.60%	0.58%	0.56%	0.55%
-7.00% and Less than -6.50%	8.00%	0.60%	0.58%	0.56%	0.55%
-6.50% and Less than -6.00%	7.50%	0.60%	0.58%	0.56%	0.55%
-6.00% and Less than -5.50%	7.00%	0.60%	0.58%	0.56%	0.55%
-5.50% and Less than -5.00%	6.50%	0.60%	0.58%	0.56%	0.55%
-5.00% and Less than -4.50%	6.00%	0.60%	0.58%	0.56%	0.55%
-4.50% and Less than -4.00%	5.50%	0.60%	0.58%	0.56%	0.55%
-4.00% and Less than -3.50%	5.00%	0.60%	0.58%	0.56%	0.55%
-3.50% and Less than -3.00%	4.50%	0.60%	0.58%	0.56%	0.55%
-3.00% and Less than -2.50%	4.00%	0.60%	0.58%	0.56%	0.55%
-2.50% and Less than -2.00%	3.50%	0.60%	0.58%	0.56%	0.55%
-2.00% and Less than -1.50%	3.00%	0.60%	0.58%	0.56%	0.55%
-1.50% and Less than -1.00%	2.50%	0.60%	0.58%	0.56%	0.55%
-1.00% and Less than -0.50%	2.00%	0.60%	0.58%	0.56%	0.55%
-0.50% and Less than 0.00%	1.50%	0.60%	0.58%	0.56%	0.55%
0.00% and Less than 0.20%	1.00%	0.60%	0.58%	0.56%	0.55%
0.20% and Less than 0.40%	0.90%	0.60%	0.58%	0.56%	0.55%
0.40% and Less than 0.60%	0.80%	0.60%	0.58%	0.56%	0.55%
0.60% and Less than 0.80%	0.70%	0.60%	0.58%	0.56%	0.55%
0.80% and Less than 1.00%	0.60%	0.60%	0.58%	0.56%	0.55%
1.00% and Less than 1.20%	0.50%	0.50%	0.50%	0.50%	0.50%
1.20% and Less than 1.30%	0.40%	0.40%	0.40%	0.40%	0.40%
1.30% and Less than 1.40%	0.30%	0.30%	0.30%	0.30%	0.30%
1.40% and Less than 1.50%	0.20%	0.20%	0.20%	0.20%	0.20%
1.50% and Less than 1.60%	0.10%	0.10%	0.10%	0.10%	0.10%
1.60% and Over	0.00%	0.00%	0.00%	0.00%	0.00%

*All rates and wage bases subject to change by the South Dakota Legislature

Eligibility for a Reduced Rate

You may be an “eligible employer” if you are a covered employer (not electing cost-reimbursement) who has qualifying experience as specified by unemployment insurance law, such as:

- You must have filed all reports and paid all money due prior to the cutoff date (January 31) each year.
- You must have been a covered employer for three calendar years (through December 31 of each year) to have your rate based on experience for the following year.

- A voluntary contribution made within two weeks of the computation date may allow a reduced rate for the year in which you made the voluntary contribution.

Rate Increases

South Dakota law provides for increases in all employer rates if the state Unemployment Insurance Trust Fund balance falls below the minimum reserve level of \$11 million. If this occurs, the additional rate information will be included in your Experience-Rating Notice.

Experience-Rating Notice

Near the first of March each year, we mail an Experience-Rating Notice to all covered employers (except cost-reimbursement employers). The notice sets forth your rate for that year, information about experience, methods used in calculating the rate and the period of time during which a valid protest may be filed.

Review and Redetermination of Rate

Because clerical error is possible when we calculate tax rates, you have the right to request a review and redetermination within 15 days of the date the notice is mailed.

Such requests should be made in writing, contain an explanation of why you think the rate assigned is incorrect, and mailed to our Aberdeen office.

Experience-Rating Account Activity

As a covered employer, you will have a unique experience-rating account recording your accumulated paid contributions, the accumulated benefit payments charged to your account, and your total taxable payroll. These three totals are used each year to compute your reserve ratio. Your contribution rate is determined by the relationship between your reserve ratio and the corresponding rate in the experience table (p. 16).

Charging of Benefits

Benefit payments to your former employees are charged to your account in inverse chronological order. In other words, the most recent employer is charged first, then the next most recent, etc.

These charges will match the corresponding percentage of wages from each of the claimant's employers. In other words, if you paid only 30 percent of the claimant's wages during his or her base period, your account will be charged only 30 percent of the benefit payment.

Probationary Period

You may establish a probationary period for new employees for unemployment insurance purposes. You will be exempt from unemployment charges if the new worker is terminated within 90 days after his or her hire date because the worker lacks ability to do the work. You must establish the 90-day probationary period **at the time of hire**.

You may **not** use a probationary period to gain exemption from unemployment benefit charges if you have elected to be a **reimbursing employer** (see p. 14).

Voluntary Contribution

You may be able to reduce your contribution rate for the year by making a voluntary contribution to your account prior to March 27th of the same year. Please contact us for details at 605.626.2312.

Investment Fee

The investment fee, as seen in the standard rate table on p. 16, is not credited to your experience-rating account. The proceeds from this fee are used for one-time research grants and economic development projects.

Negative Account Balances

Starting in 2009, if your experience rating account has a negative balance, you may be assessed interest on the negative balance.

Background

In 2006, the South Dakota Legislature adopted a comprehensive package to put the South Dakota Unemployment Insurance Trust Fund on a path to improved solvency. One of the pieces was an assessment of interest on experience-rating accounts that have maintained a negative balance.

The South Dakota Unemployment Insurance Trust Fund is held by the U.S. Treasury, where it earns interest. In 2007 the average interest earned was 4.82 percent. The South Dakota Legislature decided that employers whose experience-rating account balances were negative and had become more negative compared to the balances as of December 31, 2006, will be charged interest equivalent to the interest rate earned by the Trust Fund.

Details

If your experience-rating account has had a negative balance at the end of each quarter for the last two calendar years and the balance is more negative now than it was as of December 31, 2006, your account will be assessed interest at a rate equal to the rate the U.S. Treasury pays on the Trust Fund. During March of each year, you will receive notice of interest due. The interest is payable in four equal payments due on the last day of each quarter. This interest payment is not credited to your Unemployment Insurance Experience-Rating Account. Negative account balances prior to December 31, 2006, will be not charged.

Example

If your account balance at rating time for the 2009 tax rates is a negative \$2000 and if your account balance on December 31, 2006, was a negative \$1000, you will pay interest on the \$1000 difference. The average 2008 interest rate earned by the Trust Fund (4.78 percent) times \$1000 equals \$47.80.

Staying Informed/Getting Help

Notifications to Employers

We will notify you about:

- your experience rating
- any decisions made affecting your experience-rating account
- amounts charged to your account to pay benefits
- potential benefit charges
- any errors detected during processing of reports

Field Representatives

Field personnel of the Unemployment Insurance Division Tax Unit who work directly with employers are available at local Department of Labor offices listed on p. 34.

Still Have Questions?

If you have questions about:

- Workers you consider to be exempt, independent contractors, or who work in more than one state
- How wages of employees should be reported

- The effect of some provision of the Unemployment Insurance law
- Any other matter related to unemployment insurance or new hire reporting

you should:

- Forward a complete statement of facts regarding the matter in question to the South Dakota Department of Labor, Unemployment Insurance Division, PO Box 4730, Aberdeen, South Dakota 57402-4730
- Contact the Unemployment Insurance Tax Unit Field Representative in your area (p. 34) and discuss the question.
- Call 605-626-2312

NOTE: If you don't submit your question to us, and it is later determined that you must report additional wages, you may be required to pay penalty and interest for late reporting, in addition to the tax. So when in doubt, **ask**. We will work with you to answer all your questions.

Benefit Payment Policy and Practices

Unemployment insurance benefits are an aid to workers who have lost their jobs through no fault of their own. These benefits are not meant to be a total replacement of wages, but rather to be a protection against a total loss of wages. An individual can file an initial claim or reopen a claim at www.sd.uicclaims.com or call 605.626.3179.

The payroll tax you pay as a covered employer provides unemployment benefits for not more than the equivalent of 26 weeks in a 52-week benefit year.

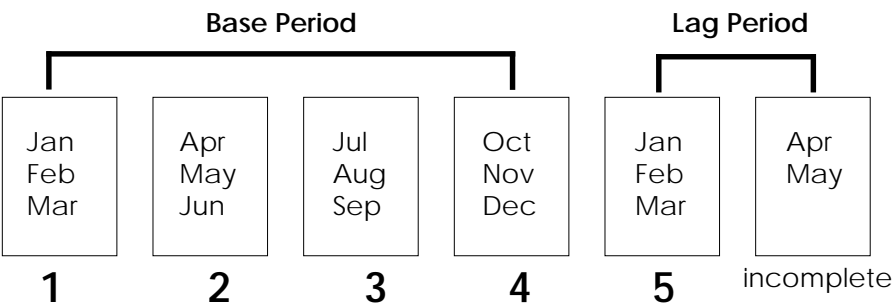
Definitions

Effective Date

This is the starting point of a claim. Under South Dakota law, the effective date of a claim is the **Sunday preceding** the date a person establishes a claim.

Base Period (Standard)

The time period used to determine a claimant’s eligibility for unemployment insurance benefits is the individual’s base period. This includes the **first four** of the **last five** completed calendar quarters immediately preceding the application for benefits. See the example below.



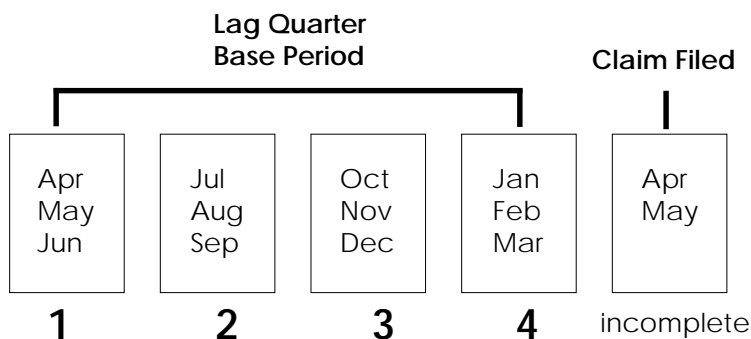
In the example, the claimant filed a claim in the month of May. His or her base period includes the four completed calendar quarters of the preceding year. The first quarter of the current year (January, February, March) plus April and part of May combine to make the **lag period**.

Alternate Base Period

There is a special base period for persons who are not monetarily eligible because they have not worked for an extended period due to a work-related injury. This base period can only be used if a claim is filed within 24 months after the injury.

Alternative Base Period (aka Lag Quarter Base Period)

South Dakota has adopted a new policy, starting July 1, 2009, that allows a different base period if the claimant is not eligible for benefits during the standard base period. This Lag Quarter Base Period counts the first four previously completed quarters. When this type of base period is used, an employer may be asked to provide the claimant's wage information immediately, in addition to the Employer's Quarterly Contribution, Investment Fee and Wage Report.



Lag Period

The length of time between the end of the base period and the beginning of the benefit year is the lag period. Wages earned during the lag period are **not** used in figuring the amount of benefits a claimant may receive.

Benefit Year

This is a one-year period starting with the effective date of the claim. During this period a claimant cannot receive more than the equivalent of 26 full payments at the weekly benefit rate established when the claim was filed. However, during periods of high unemployment, up to 13 additional weeks of benefits may be paid to a claimant at the claimant's regular benefit rate, and such payments may be made beyond the expiration of the claimant's benefit year.

Waiting Period

The first week a claimant files a valid claim for benefits is his or her waiting period week. All claimants must serve this week before receiving any benefits and are not compensated for this week.

Benefits

Weekly And Maximum Benefits

The weekly benefit amount is 1/26th of the wages paid in the highest quarter of the claimant's base period, up to a maximum amount determined by the state's average weekly wage.

The maximum amount of benefits payable within a claimant's benefit year is one third of his or her total base period wages. This must not exceed 26 times the weekly benefit amount.

Partial Benefits

A claimant working less than full-time may receive partial benefits. His or her paid benefits are reduced by 75 percent of the amount by which the wages or earnings exceed \$25 per week. However, if the claimant's wages or earnings equal or exceed the weekly benefit amount, the claimant is ineligible for benefits that week. A calendar week is a full seven days from Sunday to Saturday. All wages (whether actual payment is received or not) must be reported by the claimant for the week in which they were earned.

Reduction Of Benefits

In addition to a claimant's weekly benefit amount being reduced because of earnings, the following types of payment will also reduce the individual's weekly benefit amount.

- Termination, holiday, vacation, severance or dismissal payments or wages in lieu of notice.
- Compensation for temporary partial disability under a workers' compensation law. Other disability payments are not deductible.
- Compensation for retirement or pension if the payments were made under a plan contributed to by a base-period employer.

Eligibility and Disqualifications

Qualifying for Benefits

To qualify for benefits each claimant exhibit all of the following:

- Total or partial unemployment through no fault of his or her own
- Ability and availability for work
- Reasonable effort to find work on his or her own

These eligibility requirements have been established through law, court decisions, secretary appeals, appeal judge decisions and

central office policies and regulations. Not meeting these requirements may mean losing rights to a portion of benefits.

30-Calendar-Day Rule

When a claimant is filing a new claim for unemployment insurance benefits, the reasons for the separation from the most recent employer of at least 30 calendar days are used to determine eligibility for benefits. Should the claimant file another claim within one year of filing the initial claim, after returning to work, the 30-calendar-day requirement is not applied when determining eligibility.

Availability for Work

A claimant must be willing and ready to accept employment during the period of time benefits are being drawn. He or she can not be on vacation or involved in any other activity that would restrict his or her availability to accept employment. Application of this policy is often difficult, since it requires findings about a claimant's state of mind. However, a claimant must certify availability for work and penalties are imposed for fraudulent statements. A claimant is informed of this policy and all other policies included in this section at the times of establishing an initial claim and reopening a claim.

Ability to Work

A claimant who is sick, incapacitated or under detention (in jail, etc.) is held not eligible for benefits. A medical statement will be requested as needed to prove ability to work.

Restrictions Imposed by the Claimant

A claimant may be held available for work even if limiting the kinds of jobs or wages that will be accepted, but all limitations are closely examined to determine whether they are reasonable and whether there are genuine prospects of employment on the claimant's terms.

Search for Work

The Unemployment Insurance Division requires a claimant to make at least two contacts for work each week. These contacts must be recorded.

Conditions Affecting Availability For Work

Situations that raise the issue of eligibility include:

Leaving Community

Generally, if a claimant moves to a community where there are no reasonable job opportunities, the claimant is held not available

for work. The claimant must be willing to accept available work under wage standards and other conditions prevailing there. An active work search is strongly emphasized.

Child Care

A claimant is requested to give a name and address of a baby-sitter that would care for the child or children if the person did secure employment.

Retired Workers

The cases of workers for whom retirement was mandatory by the employer are closely examined. The type and amount of pension is taken into consideration. One half of a claimant's Social Security payments are deductible. A pension payment is a deductible item if the base-period employer is a contributor to the pension. If a worker retires voluntarily, this would be treated the same as a voluntary quit and the claimant would have to prove good cause. Mandatory retirement is treated as a layoff and the employer's account is charged.

Eligibility of Educational Institution Employees

Persons employed by an educational institution are not eligible for benefits based on employment between two academic years if they have a contract or reasonable assurance to be employed for both academic years. In other words, employees are not eligible for benefits while the school is on summer break. Such employees are also not eligible for benefits during established vacation days, holidays or days the school is legally closed, if they are employed both before and after such times.

Eligibility of Employees of Educational Institution Service Companies

Persons who work for businesses providing services to public or private schools on a contract basis may not be eligible for benefits between school terms if all three of the following conditions are met:

- They have reasonable assurance of returning to work for the fall term.
- The employment is part of a contract between their employer and the school.
- The contract is for services the school could have had performed by its own employees.

Note: Benefits will be denied only if the worker receives written notice prior to commencement of employment.

Disqualifications for Benefits

Voluntarily Leaving Employment

A claimant who voluntarily leaves employment without "good cause" is disqualified. Benefits are denied until the claimant has been re-employed at least six calendar weeks in insured employment during the current benefit year and earned wages of not less than the claimant's weekly benefit amount in each of those six weeks.

The unemployment insurance law provides that "good cause" for voluntarily leaving employment is restricted to leaving employment because:

- Continued employment presents a hazard to the employee's health. However, this applies only if, prior to the separation, the employee is examined by a doctor or chiropractor who signs a certificate supporting the existence of the health hazard.
- You required the employee to relocate residence to hold his or her job.
- Your conduct demonstrates a substantial disregard of the standards of behavior your employee has a right to expect of you, or that you breached or substantially altered the contract for employment.
- An individual accepted employment with you while on layoff and subsequently quit such employment to return to work for his/her regular employer.
- The employee's religious belief mandates leaving. The provision does not apply, however, if you have offered your employee reasonable accommodations taking into consideration his or her religious beliefs, and if you make this offer before the employee leaves your employment.
- Leaving is necessary to protect the individual from domestic abuse. However, this subdivision applies only if:
 - The employee reports the abusive situation to law enforcement within 48 hours of any occurrence and cooperates fully with law enforcement in any subsequent investigation and criminal charge relating to the abusive situation.
 - The employee has left the abusive situation and remains separate from the situation.
 - The employee made reasonable efforts to preserve the employment before quitting.Any person found to have good cause for leaving employment due to domestic abuse and who returns to the abusive situation is ineligible for benefits.

Misconduct

If the employee is discharged for "misconduct," benefits will be denied until he or she has been re-employed and earned an amount equal to the person's weekly benefit amount in each of six different weeks.

A claimant would be separated due to misconduct when one of the following is determined:

- Failure to obey orders, rules or instructions, or failure to discharge the duties for which the claimant was employed.
- Substantial disregard of your interests as employer or of the claimant's duties and obligations to you.
- Conduct evincing such willful or wanton disregard of your interests as is found in deliberate violation or disregard of standards of behavior you have the right to expect from your employee.
- Carelessness or negligence of such degree of recurrence as to manifest equal culpability or wrongful intent. However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief that you cannot reasonably accommodate is not misconduct.

Refusing Employment

If we find that an unemployed individual has failed, without good cause, to apply for available suitable work when so directed by us, to accept suitable work when offered, or to return to customary self-employment when directed by us, benefits will be denied until he or she has

- Been re-employed at least six calendar weeks in insured employment during the current benefit year
- Has earned wages of not less than the claimant's weekly benefit amount in each of those six weeks

In determining whether work is suitable, we consider the:

- Degree of risk involved to the individual's health, safety and morals
- Physical fitness and prior training
- Experience and prior earnings
- Length of unemployment and prospects for securing local work in the individual's customary occupation
- Distance of the available work from the individual's residence

Compelling personal circumstances may justify refusal of a job. Examples of circumstances that would require a determination include:

- Health and safety hazards
- Interference with religious beliefs
- Requirement to purchase tools and/or equipment
- Pay, hours and/or location
- Type of work and experience required

What constitutes good cause is influenced by general labor market conditions. A “reasonably prudent person” acts differently when jobs are plentiful.

Appeal Request

If you or a former employee is dissatisfied with a non-monetary decision, you each have 15 days from the date on the determination notice to appeal. If either party does not agree with the appeal decision, the next step would be an appeal to the Secretary of Labor or directly to Circuit Court. However, the Secretary is **not** required to review all cases appealed to her or him. Parties who appeal to the Secretary retain the option of appealing to Circuit Court. No fee is charged to either party for a regular appeal or a Secretary’s appeal.

You and your former employee may be represented by an attorney at an appeal; such representation is not required, however.

Quality Control Program/Benefit Payment Control

Audits

We audit a sample group of claimants selected each week to test the accuracy of the unemployment insurance payments and denials. On an ongoing basis, auditors interview claimants who are selected randomly by the computer. In addition, they review the claim and contact the employer to verify appropriate payroll records and to substantiate the reason for unemployment. They also verify the claimant’s work search attempts.

The audits result in answers to the questions, “Was this claimant truly eligible to receive unemployment insurance benefits?” or “Was this claimant properly denied benefits?”

Auditors document types and causes of over- or under-payment of benefits and improper denials. They also determine whether the

errors were made by the claimant, the Unemployment Insurance Division or the employer.

The purpose of the Quality Control Program is to prevent and reduce both fraud and abuse through better detection of improper payments and denials.

In addition, the program is intended to reduce improper payments or denials in the future by deterring future unemployment insurance claimants from submitting inaccurate information on the claim applications. This helps reduce taxes for you and other employers.

As part of conducting a thorough audit, investigators may need to contact you. Therefore, your cooperation in this effort is greatly appreciated. If you would like more information about Quality Control, call 605.626.7649.

Fraud, Misrepresentation And Overpayments

Through our fraud detection unit, we work to prevent and detect benefits paid through willful misrepresentation, including collusion, conspiracy or error by the claimant or others. The program also focuses on recovery of benefit overpayments.

In addition to detecting and recovering overpayments, the fraud unit investigates overpayments to determine if they resulted from misrepresentation. The unit prosecutes those cases where deliberate fraud is clearly indicated and where evidence can be presented to substantiate the charge.

All potential fraud cases are investigated and classified as either "overpayment" or "fraud." Criminal charges are not filed in overpayment cases except where misrepresentation occurred; however, the law does require restitution.

In addition to investigation, the fraud unit is a liaison with other state, federal and local law enforcement agencies.

How can you help?

To assist the fraud unit in its investigation of potential fraud, you can:

- Provide information promptly, including completion of wage crossmatch forms.
- Make certain the information given is as accurate and complete as possible.

- Contribute any other information that can help the unit in its investigation to determine if benefits have been fraudulently claimed.

You can report information by contacting an investigator at one of the following locations:

- Aberdeen 605.626.7649
- Rapid City 605.394.2295
- Sioux Falls 605.367.5306

You can also visit our Web site at www.sdjobs.org. Click on 'Unemployment Insurance' on the right menu and then 'Reporting Possible Fraud' on the left menu.

Department of Labor Local Offices

You will save time and money recruiting and training new personnel when you use the services of our local offices.

Employment Service

Recruitment

Local offices match applicants with your job specifications to meet your personnel needs in a prompt and efficient manner. Using our extensive computer database of job openings and applicants, the local office simplifies the process of finding the right employee for the job. Job information such as salary, job duties and qualifications are matched with an applicant's experience and qualifications.

Local offices also conduct outreach activities to assist you in attaining affirmative action goals. For new and expanding businesses hiring a large number of workers, the local office can provide special recruitment services.

Screening

Local office employment representatives screen and refer only the qualified applicants to you, so you don't waste time interviewing those who lack the special requirements desired. Then you can make the decision whether to hire.

Online Services

Contact your local office (see p. 33) to place a job order and receive these services. You may also establish an account, list job

openings and/or look for the right employee using the SDWORKS online system. Visit our Web site, www.sdjobs.org. Just click on 'Post a Job.'

Skilled and Professional Employees

Our local offices have qualified job applicants for a variety of jobs, both skilled and professional. We encourage you to call your local office when you need applicants with graduate degrees, specialized training and/or experience.

New Hire Reporting

All employers, private, non-profit and government agencies, are required to report certain information on newly hired, re-hired, re-employed or re-instated employees to the New Hire Reporting Center (NHRC). This information is matched against child support records to locate parents and to establish or enforce child support orders.

You must report all new hires within 20 days of the date of hire, including any employee who is hired, whether full-time, part-time, student or temporary.

You must report the following information to the NHRC:

- Employee name, address and Social Security number
- Employer name, address and Federal Identification number

You can send:

- A printed list with the required information
- A copy of the federal W-4 form
- A downloaded version of the data from your computer system, copied onto a CD-ROM, diskette or magnetic cartridge

You have several reporting options:

- Online - go to www.sdjobs.org, choose 'Online Services' on the left menu, then 'Report newly hired workers.'
- Phone - 888.827.6078 or 605.626.2942
- Fax - 888.835.8659 or 605.626.2842
- Mail - New Hire Reporting Center
SD Department of Labor
PO Box 4700
Aberdeen SD 57402-4700

Labor Market Information

The Labor Market Information Center (LMIC) is your best source for labor market information, covering local, state and national data. Labor market information includes employment and unemployment, the number of workers by industry, and average annual pay by industry.

The LMIC provides you with:

- Occupational wage and benefit information
- Estimates of available labor
- Analysis of current economic conditions
- Projected worker levels by industry and occupation
- Employment staffing patterns
- Affirmative action information
- Cost of living information

The LMIC also provides numerous publications and materials containing information for career planners and decision makers. A great deal of labor market information is also available at our Web site at www.sdjobs.org. Click on 'Labor Market Statistics.'

LMIC publishes a monthly economic newsletter, *The South Dakota e-Labor Bulletin*. To subscribe, click on 'Order Publications' or call the Labor Market Information Center at 800.592.1881.

Department of Labor Local Offices

Aberdeen

420 S Roosevelt, PO Box 4730
57402-4730
605.626.2340

Brookings

1310 Main Ave S, Suite 103
57006-3893
605.688.4350

Hot Springs

2500 Minnekahta Ave
57747-1199
605.745.5101

Huron

380 Illinois SW
57350-2413
605.353.7155

Lakes Andes

3rd & Lake St
57356
605.487.7607, x203 or 212

Madison

223 S Van Eps Ave, Suite 101
57042-2886
605.256.5300

Mitchell

1321 N Main St
57301-1354
605.995.8060

Mobridge

1415 E Grand Crossing
57601-2905
605.845.2971

North Sioux City

504 River Dr, City Hall
57049-3015
605.242.5445

Pierre

116 W Missouri Ave
57501-4506
605.773.3372

Pine Ridge

PO Box 400, Billy Mills Hall
57770-0400
605.867.5843

Rapid City

111 New York St
57701-1832
605.394.2296

Sioux Falls

811 E 10th St, Dept 41
57103-1650
605.367.5300

Sisseton

205 E Oak, Federal Bldg
57262-1526
605.698.3964

Spearfish

1300 North Ave
57783-1525
605.642.6900

Vermillion

1024 W Cherry
57069-1742
605.677.6900

Winner

313 S Main St
57580-1728
605.842.0474

Yankton

3113 Spruce, Suite 124
57078-5320
605.668.2900

Unemployment Insurance Division Administrative Office

Aberdeen
420 S Roosevelt St
PO Box 4730
57402-4730
Appeals: 605.626.2310
Tax: 605.626.2312
Benefits: 605.626.2452

Unemployment Insurance Tax Unit Field Representatives

Aberdeen
420 S Roosevelt St
PO Box 4730
57402-4730
605.626.2312

Brookings
1310 Main Ave S, Suite 103
57006-3893
605.688.5851

Huron
380 Illinois SW
57350-1356
605.353.7155

Pierre
116 W Missouri Ave
57501-0460
605.773.3398

Rapid City
111 New York St
57701
605.394.2317, 2376 or 1651

Sioux Falls
811 E 10th St, Dept 42
57103-1650
605.367-5309, 5310, 5311 or
5592

Watertown
2001 9th Ave SW, Suite 200
57201-4029
605.882.5151

Example 1 Employer's Contribution Report Form 21

A-1

DOL 902 27A (10/99)

UNEMPLOYMENT INSURANCE DIVISION OF SOUTH DAKOTA

Employer's Report of Wages Paid to Each Employee

Continuation Sheet

PLEASE TYPE THIS REPORT

1. Account No.

Quarter/Year

15. Employee's Social Security Number	16. Employee's Name (Last, First)	17. Total Gross Wages Paid	18. Gross Wages This Quarter
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[illegible]

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